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To: EXAMINER GUTMAN, H.  
U.S. PATENT AND TRADEMARK OFFICE  
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(to be used for all correspondence after initial filing)

Attorney Docket No.	3000/22
Application Number	10/664,806
Filing Date	SEPTEMBER 17, 2003
First Named Inventor	TIMOTHY K. SEARFOSS
Group Art Unit	3612
Examiner	GUTMAN, H

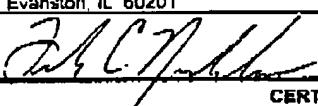
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Indep		Minus			x \$100=	0	x \$200=	
First Presentation of Multiple Dep. Claim					-\$180=	--	-\$360=	
					total add'l fee	\$ 0	total add'l fee	\$ 0

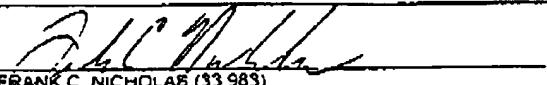
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Signature		Date	JANUARY 10, 2005

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First Named Inventor	TIMOTHY K. SEARFOSS
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Examiner	GUTMAN, M

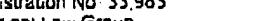
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Firm or Individual name	FRANK C NICHOLAS Registration No. 33,983 Cardinal Law Group 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201
Signature	
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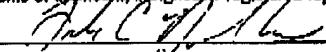
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FRANK C. NICHOLAS (33.963)

Name of applicant, assignee or registered representative



Signature

January 10, 2005

Date of Signature

**PATENT-APPEAL****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**Applicant: **TIMOTHY SEARFOSS**

Group Art Unit: 3612

Serial No.: **10/664,806** Filed: **September 17, 2003** Examiner: **Gutman, H.**Title: **TRAIL COVER SYSTEM**Attorney Docket No.: **3000/22****APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22202-1450

Sir:

This is an appeal from the final rejection of claims 1-33 in the Office Action mailed September 7, 2004.

**REAL PARTY IN INTEREST**

The real party in interest is Roll Rite Corporation.

**RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences are known which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**STATUS OF CLAIMS**

This application was filed September 17, 2003 with claims 1-33 (reproduced in Claims Appendix). The claims were not amended, and are the subject of the present appeal.

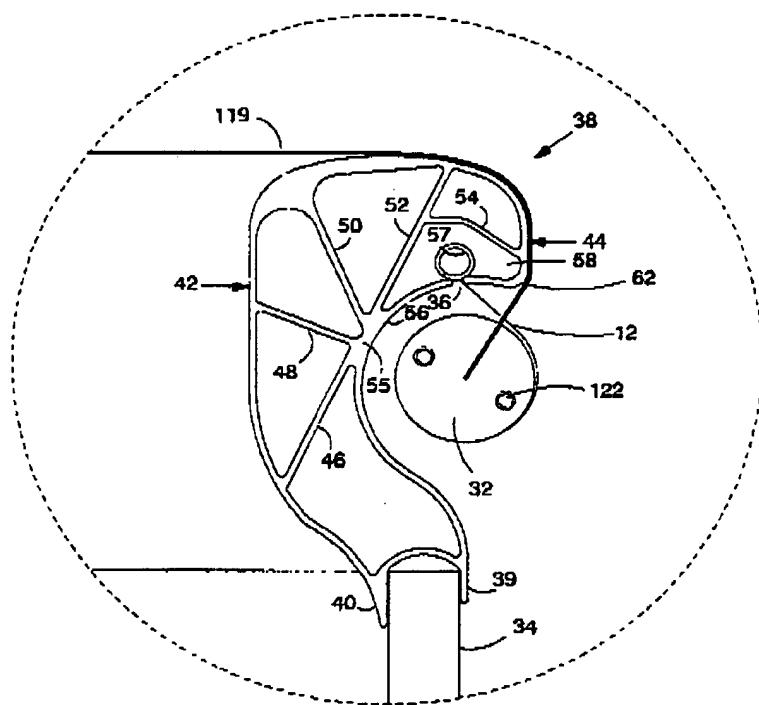
**STATUS OF AMENDMENTS**

There are no unentered amendments.

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### SUMMARY OF INVENTION

The invention is a rail 38 for a top of a wall 34 of a trailer. The rail 38 comprises a body adapted to engage the top of the wall 34. The body has a concave surface 56 adapted to receive a cover reel 32:



**FIG. 3**

All of the independent claims recite "a body adapted to engage the top of the wall" and/or the body "having a concave surface."

### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. The Examiner maintains that the application improperly claims priority to itself.
2. Independent claim 1 was finally rejected under §102(e) over U.S. Patent No. 6,513,856 to Swanson et al. (Appendix B).

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3. Independent claims 1, 12 and 23 were finally rejected over U.S. Patent No. 5,984,400 to Miller et al. (Appendix C) either alone (claim 1) or in combination with a secondary reference (claims 12 and 23).

#### GROUPING OF CLAIMS

Claims 1, 12 and 23 are the independent claims involved in the appeal. The dependent claims stand or fall with their respective independent claim.

#### ARGUMENT

##### A. A corrected declaration has been filed, obviating the rejection

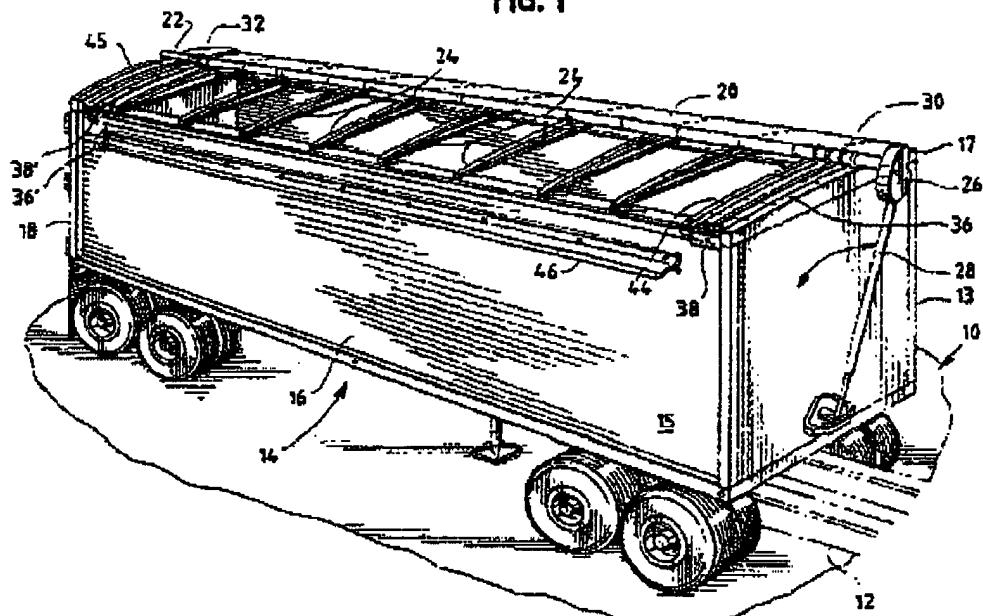
The Examiner maintains that the application improperly claims priority to itself. A supplemental declaration was filed on August 16, 2004, but the Examiner has not acknowledged receipt of that document. The Examiner also included a boilerplate reminder of the proper format for an abstract, but did not detail any deficiencies in the abstract as filed. Thus, neither of these matters is considered to be an issue that would preclude this application from issue.

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**B. Swanson's Ledge Engages The Side of the Trailer, Not the Top**

The Examiner maintains that a ledge 46 of Swanson et al. '856 is attached "at the top" of the trailer. Office Action mailed September 7, 2004 at page 7.

**FIG. 1**



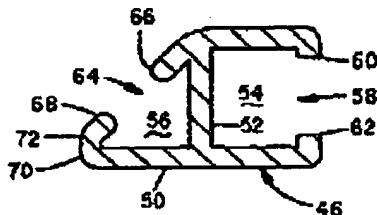
The first issue in this appeal is whether the ledge 46 of Swanson et al. '856 engages the top of the wall.

In the drawings, the ledge 46 of Swanson et al. '856 is plainly situated some distance from the top of the wall. See Figures 1 and 6. The specification does not suggest anything else: "[L]ongitudinal latch plate or ledge 46 [is] attached on side 15 near second lengthwise edge 19 of the container 16." Swanson et al. '856 (Appendix B) at column 5, lines 63-65.

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**C. Miller's Channel Is Not Concave**

The Examiner maintains that a channel 56 of Miller et al. '400 is "generally concave since it extends inwardly and is generally C-shaped." Office Action mailed September 7, 2004 at page 7.



**FIG. 3**

The second issue in this appeal is whether the channel 56 of Miller '400 is concave.

"Concave" means "curved like a segment of the interior of a circle or hollow sphere; hollow and curved." Webster's Encyclopedic Unabridged Dictionary of the English Language (1989) (Appendix D).

Miller et al. '400 shows a channel 56 with two walls extending at 90 degree angles from each other. The Examiner's statement that she "believes" the channel 56 "to be generally concave since it extends inwardly and is generally C-shaped" does not change either the definition of "concave" or the disclosure of Miller et al. '400.

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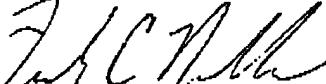
**SUMMARY**

The Examiner maintains that the references show something that they plainly do not.  
The final rejection of claims 1-33 should be reversed.

Respectfully submitted,

**TIMOTHY SEARFOSS**

Date: January 10, 2005

By:   
Frank C. Nicholas (Reg. No. 33,983)  
**CARDINAL LAW GROUP**  
1603 Orrington Ave., Suite 2000  
Evanston, IL 60201

Enclosures: Claims Appendix - Claims 1-33  
Appendix B - U.S. Patent No. 6,513,856 to Swanson et al.  
Appendix C - U.S. Patent No. 5,984,400 to Miller et al.  
Appendix D - entry from Webster's dictionary

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CLAIMS APPENDIX

1. A rail for a top of a wall of a trailer, the rail comprising:  
a body adapted to engage the top of the wall, the body having a concave surface adapted to receive a cover reel.
2. The rail of claim 1 wherein the concave surface faces away from the trailer.
3. The rail of claim 1 further comprising at least one leg connected to the body.
4. The rail of claim 3 wherein the at least one leg is adapted to engage the top of the wall.
5. The rail of claim 3 wherein the at least one leg is adapted to be welded to the top of the wall.
6. The rail of claim 1 wherein the body comprises a plurality of ribs.
7. The rail of claim 1 wherein the body includes an opening adapted to anchor a cover.
8. The rail of claim 1 wherein the body extends at least a majority of a length of the wall of the trailer.
9. The rail of claim 1 wherein the body comprises aluminum.
10. The rail of claim 1 wherein the body comprises a polymer.
11. The rail of claim 1 wherein the body is extruded.
12. An apparatus for extending and retracting a cover over a trailer, the apparatus comprising:  
a base pivotably connected to the trailer;  
an extension connected to the cover and pivotably connected to the base; and  
a rail for a top of a wall of the trailer, the rail including a body adapted to engage the top of the wall, the body having a concave surface adapted to receive a cover reel.

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13. The apparatus of claim 12 wherein the concave surface faces away from the trailer.
14. The apparatus of claim 12 further comprising at least one leg connected to the body.
15. The apparatus of claim 14 wherein the at least one leg is adapted to engage the top of the wall.
16. The apparatus of claim 14 wherein the at least one leg is adapted to be welded to the top of the wall.
17. The apparatus of claim 12 wherein the body comprises a plurality of ribs.
18. The apparatus of claim 12 wherein the body includes an opening adapted to anchor the cover.
19. The apparatus of claim 12 wherein the body extends at least a majority of a length of the wall of the trailer.
20. The apparatus of claim 12 wherein the body comprises aluminum.
21. The apparatus of claim 12 wherein the body comprises a polymer.
22. The apparatus of claim 12 wherein the body is extruded.
23. An apparatus for extending and retracting a cover over a trailer, the apparatus comprising:
  - a base pivotably connected to the trailer;
  - an extension connected to the cover and pivotably connected to the base;
  - a reel connected to the extension;
  - a motor mounted on the extension and drivingly engaged with the reel to selectively extend and retract the cover over the trailer; and
  - a rail for a top of a wall of the trailer, the rail including a body adapted to engage the top of the wall, the body having a concave surface adapted to receive the reel.

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24. The apparatus of claim 23 wherein the concave surface faces away from the trailer.
25. The apparatus of claim 23 further comprising at least one leg connected to the body.
26. The apparatus of claim 25 wherein the at least one leg is adapted to engage the top of the wall.
27. The apparatus of claim 25 wherein the at least one leg is adapted to be welded to the top of the wall.
28. The apparatus of claim 23 wherein the body comprises a plurality of ribs.
29. The apparatus of claim 23 wherein the body includes an opening adapted to anchor the cover.
30. The apparatus of claim 23 wherein the body extends at least a majority of a length of the wall of the trailer.
31. The apparatus of claim 23 wherein the body comprises aluminum.
32. The apparatus of claim 23 wherein the body comprises a polymer.
33. The apparatus of claim 23 wherein the body is extruded.

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**EVIDENCE APPENDIX**

Appellants entered no evidence pursuant to §1.130, 1.131 or 1.132, and the Examiner entered no evidence that was relied upon by Appellants.

**RELATED PROCEEDINGS APPENDIX**

There are no copies of related decisions or proceedings.

con-cate-ate (kən'kātē) v. 1. to join together, as in a series, as in a chain. 2. to make or become joined together. [L *con-* + *catere* (to join). See CON- + -ATE.]

con-cate-nate (kən'kātēnāt') v. 1. to join together, as in a series, as in a chain. 2. to make or become joined together. [L *con-* + *catenāt-* (chain) + *āt-* (to join). See CON- + -ATE.]

con-cate-nat-ed (kən'kātēnāt'ēd) adj. -ated, -ating. adj. 1. joined together, linked in a series, as in a chain. 2. joined together, as in a chain. [L *con-* + *catenāt-* (chain) + *-ēd*. See CON- + -ATE.]

con-cate-nat-ion (kən'kātēnāshən) n. 1. the act of concatenating. 2. the state of being concatenated. 3. a series of interconnected or interdependent things or events. [L *con-* + *catenāt-* (chain) + *-iōn*. See CON- + -ATE.]

con-cave (kōv, kōv'v) adj. 1. having a concave surface. 2. having a hollow or concave part. 3. having a concave surface, as one against which a drum rotates. —v. 6. to make concave. [L *con-* (out) + *cavus* (hollow). See CONVEX.] —con-cav-ity, n.

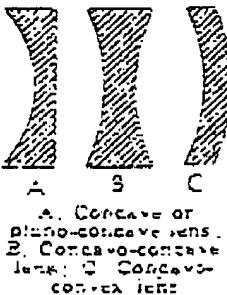
con-cav-ity (kōv'vētē) n., pl. -ties. 1. the state or quality of being concave. 2. a concave surface or thing, a hollow; cavity. [L *con-* (out) + *cavus* (hollow). See CONVEX.]

con-cav-o-con-cave (kōv'vōkōv'v) adj. concave on one side and convex on the other. —v. 2. of, pertaining to, or having a side in which the concave face has a greater degree of curvature than the convex face. [L *con-* (out) + *convex*.]

con-cam (kōn'kām') n. 1. to hide; withdraw or remove from observation. cover or keep from sight. 2. to conceal from another. 3. to keep secret, to prevent or avoid disclosing or divulging. 4. to conceal the true source of the song. [L *con-* (out) + *camus* (conceal). See CONCEAL.] —con-cam-able, adj. —con-cam-ably, adv. —con-cam-er, n. —Syn. 2. See hide.

con-cam-ment (kōn'kām'ēnt) n. 1. the act of concealing. 2. the state of being concealed. 3. a means or piece of hiding. [L *con-* (out) + *camus* (conceal). See CONCEAL.]

con-cede (kōn'kēd') v. -ced-ed, -ced-ing, -ed. 1. to acknowledge as true, just, or proper; admit. 2. to give up; give in. —n. 1. The right, usually conceded, of one to do something. 2. a position or victory, score, etc.; score. 3. that which is officially established. 4. to yield or give in. 5. that which is conceded. 6. to grant as a right or privilege. yield or concede a larger amount than one's entitlement. —v. 7. to make concessions. 8. to admit. 9. to grant, allow, or permit. 10. to concede. [L *con-* (out) + *cēdere* (to give). See CONCEAL.] —con-cede-er, n.



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